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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

OPEN SOCIETY JUSTICE INITIATIVE,

Plaintiff,

v.

OFFICE OF THE DIRECTOR OF  
NATIONAL INTELLIGENCE,

Defendant.

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. In this lawsuit, Plaintiff seeks injunctive relief to compel Defendant Office of the Director of National Intelligence (“ODNI”) to immediately release specific ODNI reports (including annexes) related to the killing of U.S. resident Jamal Khashoggi in response to Plaintiff’s properly filed FOIA request.

2. Plaintiff is bringing this action because, to date, Defendant has not issued a determination on Plaintiff’s FOIA request within the statutorily prescribed time limit nor disclosed any responsive records.

## **JURISDICTION AND VENUE**

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) because Plaintiff's principal place of business is in this district.

## **PARTIES**

4. The Open Society Justice Initiative ("OSJI") is an operating public interest law center dedicated to upholding human rights and the rule of law through litigation, advocacy, research, and technical assistance. It is part of the Open Society Institute, a tax-exempt, non-partisan, not-for-profit organization, headquartered in New York City. OSJI is a "person" within the meaning of 5 U.S.C. § 551(2). Disseminating information is among OSJI's core activities. To accomplish these goals, OSJI maintains a website, <http://www.justiceinitiative.org>, through which it disseminates publications, articles, and multimedia files relating to its mission. It also directly distributes hard copies of publications and disseminates information through quarterly email newsletters, blogs, Twitter, and Facebook.

5. Defendant ODNI is an "agency" within the meaning of 5 U.S.C. § 552(f)(1). It has possession and control over the requested records.

## **STATEMENT OF FACTS**

6. Jamal Khashoggi, a Saudi national, was a *Washington Post* columnist and a U.S. resident who had been a vocal critic of the Saudi government and Saudi Crown Prince Mohammed bin Salman.<sup>1</sup> On October 2, 2018, he disappeared after entering the Saudi Consulate

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<sup>1</sup> Donna Abu Nasr, *Who is Jamal Khashoggi? A Saudi Insider Who Became an Exiled Critic*, Bloomberg (Oct. 20, 2018), [https://www.washingtonpost.com/business/who-is-jamal-khashoggi-a-saudiinsider-who-became-an-exiled-critic/2018/10/20/0a996bea-d492-11e8-a4db-184311d27129\\_story.html?utm\\_term=.b99447153753](https://www.washingtonpost.com/business/who-is-jamal-khashoggi-a-saudiinsider-who-became-an-exiled-critic/2018/10/20/0a996bea-d492-11e8-a4db-184311d27129_story.html?utm_term=.b99447153753).

in Istanbul.<sup>2</sup> Since then, Mr. Khashoggi's disappearance has been the subject of intense Congressional and public debate.

7. On October 10, 2018, a bipartisan group of 22 senators (including Senator Bob Corker (R-Tenn.) and Senator Robert Menendez (D-N.J.), the chairperson and the ranking member of the Senate Foreign Relations Committee, respectively) wrote a letter to President Trump requesting that he make a determination on the imposition of sanctions pursuant to the Global Magnitsky Human Rights Accountability Act with respect to any foreign person responsible for a gross violation of internationally recognized human rights in relation to Mr. Khashoggi.<sup>3</sup> Because the letter was co-signed by the two leaders of the Committee, the President was required, within 120 days of receiving the request (i.e. by on or about February 8, 2019), to determine, in the context of Mr. Khashoggi's case, whether one or more foreign persons has engaged in or is responsible for "extrajudicial killings, torture, or other gross violations of internationally recognized human rights"; and to submit to the two leaders a classified or unclassified report that includes "a statement of whether or not the President imposed or intends to impose sanctions with respect to the person" along with a description of any such sanctions.<sup>4</sup> The Trump Administration refused to meet the Global Magnitsky Act deadline for this determination.<sup>5</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> Press Release, Chairman of the Senate Comm. on Foreign Relations, Corker, Menendez, Graham, Leahy Letter Triggers Global Magnitsky Investigation Into Disappearance of Jamal Khashoggi (Oct. 10, 2018), <https://www.foreign.senate.gov/press/chair/release/corker-menendez-graham-leahy-letter-triggers-global-magnitsky-investigation-into-disappearance-of-jamal-khashoggi>.

<sup>4</sup> Global Magnitsky Human Rights Accountability Act, § 1263(d) (22 U.S.C. § 2656 note).

<sup>5</sup> Nicole Gaouette & Kevin Liptak, *White House refuses to meet Congress' deadline on Khashoggi killing*, CNN (Feb. 8, 2019), <https://www.cnn.com/2019/02/08/politics/white-house-khashoggi-deadline/index.html>.

8. After repeatedly saying that Mr. Khashoggi had left the Consulate alive, the Saudi government finally acknowledged on October 19, 2018 that he had been killed inside the Saudi Consulate in Istanbul.<sup>6</sup> CIA Director Gina Haspel reportedly traveled to Turkey to review the case and listened to audio recordings that the Turkish government claimed captured Mr. Khashoggi's murder.<sup>7</sup> On November 16, 2018, the *Washington Post* reported that the CIA had "concluded that Saudi Crown Prince Mohammed bin Salman ordered the assassination of journalist Jamal Khashoggi in Istanbul."<sup>8</sup>

9. On November 20, 2018, President Trump issued a statement standing with Saudi Arabia.<sup>9</sup> He stated, "After great independent research, we now know many details of this horrible crime. . . . King Salman and Crown Prince Mohammad bin Salman vigorously deny any knowledge of the planning or execution of the murder of Mr. Khashoggi. Our intelligence agencies continue to assess all information, but it could very well be that the Crown Prince had knowledge of this tragic event—maybe he did and maybe he didn't!"<sup>10</sup> On another occasion, citing the CIA report in his possession, President Trump noted that the CIA "did not come to a

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<sup>6</sup> Kevin Sullivan et al., *Saudi Arabia fires 5 top officials, arrests 18 Saudis, saying Khashoggi was killed in fight at consulate*, Wash. Post (Oct. 19, 2018), [https://www.washingtonpost.com/news/world/wp/2018/10/19/saudi-government-acknowledges-journalist-jamal-khashaoggi-died-while-in-that-countrys-consulate-in-istanbul/?utm\\_term=.76d983cad529](https://www.washingtonpost.com/news/world/wp/2018/10/19/saudi-government-acknowledges-journalist-jamal-khashaoggi-died-while-in-that-countrys-consulate-in-istanbul/?utm_term=.76d983cad529).

<sup>7</sup> *Khashoggi murder: CIA director Gina Haspel briefs Trump*, BBC News (Oct. 26, 2018), <https://www.bbc.com/news/world-us-canada-45977041>.

<sup>8</sup> Shane Harris et al., *CIA concludes Saudi crown prince ordered Jamal Khashoggi's assassination*, Wash. Post (Nov. 16, 2018), [https://www.washingtonpost.com/world/national-security/cia-concludes-saudi-crown-prince-ordered-jamal-khashoggis-assassination/2018/11/16/98c89fe6-e9b2-11e8-a939-9469f1166f9d\\_story.html?utm\\_term=.b940c2f30d5b](https://www.washingtonpost.com/world/national-security/cia-concludes-saudi-crown-prince-ordered-jamal-khashoggis-assassination/2018/11/16/98c89fe6-e9b2-11e8-a939-9469f1166f9d_story.html?utm_term=.b940c2f30d5b).

<sup>9</sup> Statement from President Donald J. Trump on Standing with Saudi Arabia (Nov. 20, 2018), <https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-standing-saudi-arabia/>.

<sup>10</sup> *Id.*

conclusion” about the Crown Prince’s involvement in the murder, adding that “[t]hey have feelings certain ways, but they didn’t—I have the report.”<sup>11</sup>

10. The President’s statement standing with Saudi Arabia has been the subject of extensive public debate. Senators have vigorously disputed the President’s characterization of the CIA’s report.<sup>12</sup> When asked if the President was lying about the CIA’s conclusion, Senator Jack Reed (D-R.I.) said, “Yes. The CIA concluded that the crown prince of Saudi Arabia was directly involved in the assassination of Khashoggi.”<sup>13</sup> A *Wall Street Journal* editorial wrote, “we are aware of no President, not even such ruthless pragmatists as Richard Nixon or Lyndon Johnson, who would have written a public statement like this without so much as a grace note about America’s abiding values and principles,” and that it was “startling to see a U.S. President brag [about commercial deals with Saudi Arabia] in a statement about a bloodthirsty murder.”<sup>14</sup> A State Department official who had seen the CIA’s assessment on Mr. Khashoggi’s killing reportedly told ABC News that it was “blindingly obvious” that Crown Prince Mohammad bin Salman had ordered the killing and that there was “overwhelming consensus that the [Saudi] leadership is involved—no one is debating it within the government.”<sup>15</sup> On November 20, 2018,

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<sup>11</sup> Kate Sullivan & Zachary Cohen, *Senate Dem on Armed Services panel: Trump lying about CIA report on Khashoggi*, CNN (Nov. 23, 2018), <https://www.cnn.com/2018/11/23/politics/senate-dem-armed-services-cia-khashoggi/index.html>.

<sup>12</sup> *Id.*; Karoun Dimirjian et al., *Rebuking Trump, senators back effort to suspend U.S. support for Saudi-led war in Yemen*, Wash. Post (Nov. 28, 2018), [https://www.washingtonpost.com/powerpost/pompeo-mattis-to-brief-senate-on-saudi-arabia-khashoggi-and-yemen/2018/11/27/ee4e36c0-f28a-11e8-bc79-68604ed88993\\_story.html?utm\\_term=.4dde49d6aeeb](https://www.washingtonpost.com/powerpost/pompeo-mattis-to-brief-senate-on-saudi-arabia-khashoggi-and-yemen/2018/11/27/ee4e36c0-f28a-11e8-bc79-68604ed88993_story.html?utm_term=.4dde49d6aeeb).

<sup>13</sup> Sullivan & Cohen, *supra* note 11.

<sup>14</sup> Editorial, *Trump’s Crude Realpolitik*, Wall St. J. (Nov. 20, 2018), <https://www.wsj.com/articles/trumps-crude-realpolitik-1542763629>.

<sup>15</sup> Tara Palmeri, ‘Blindingly obvious’ that Saudi crown prince ordered Khashoggi murder: Source, ABC News (Nov. 20, 2018), <https://abcnews.go.com/Politics/blindingly-obvious-saudi-crown-prince-ordered-khashoggi-murder/story?id=59305430>.

former CIA Director John Brennan called for Congress to declassify the report, tweeting, “Since Mr. Trump excels in dishonesty, it is now up to members of Congress to obtain & declassify the CIA findings on Jamal Khashoggi’s death. No one in Saudi Arabia—most especially the Crown Prince—should escape accountability for such a heinous act.”<sup>16</sup>

11. On November 28, 2018, Secretary of State Mike Pompeo and Defense Secretary James Mattis briefed Senators behind closed doors in relation to Saudi Arabia, Yemen, and the Khashoggi case. Despite bipartisan frustration at not hearing directly from CIA Director Gina Haspel on the Khashoggi case, she did not attend.<sup>17</sup> After that briefing, Secretary Pompeo refused to answer reporters’ questions about why Gina Haspel did not attend, and told them, “I do believe I’ve read every piece of intelligence . . . . There is no direct reporting connecting the crown prince to the order to murder Jamal Khashoggi.”<sup>18</sup>

12. Subsequent news reports suggest that Secretary Pompeo’s choice of words obscure the CIA’s conclusion that Crown Prince Mohammad bin Salman is culpable. The *Wall Street Journal*, based on its review of excerpts of the CIA’s assessment of the murder, has reported that the excerpts “state that the CIA has ‘medium-to-high confidence’ that Prince Mohammed ‘personally targeted’ Khashoggi and ‘probably ordered his death.’”<sup>19</sup> The CIA reportedly notes in its assessment that it “‘lack[s] direct reporting of the Crown Prince issuing a

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<sup>16</sup> John O. Brennan (@JohnBrennan), Twitter (Nov. 20, 2018, 10:31 AM), <https://twitter.com/JohnBrennan/status/1064949331868954629>.

<sup>17</sup> Dimirjian et al., *supra* note 12.

<sup>18</sup> Dierdre Shesgreen, *Lawmakers livid after CIA director Gina Haspel a no-show for closed-door briefing on Khashoggi murder*, USA Today (Nov. 28, 2018), <https://www.usatoday.com/story/news/world/2018/11/28/mike-pompeo-blasts-lawmakers-over-jamal-khashoggis-murder-saudi-arabia-yemen/2136140002/>.

<sup>19</sup> Warren P. Strobel, *CIA Intercepts Underpin Assessment Saudi Crown Prince Targeted Khashoggi*, Wall St. J. (Dec. 1, 2018), <https://www.wsj.com/articles/cia-intercepts-underpin-assessment-saudi-crown-prince-targeted-khashoggi-1543640460>.

kill order,” but its “judgment on Prince Mohammed’s likely culpability . . . is based on the crown prince’s personal focus on Mr. Khashoggi, his tight control over the Saudi operatives sent to Istanbul to kill him, ‘and his authorizing some of the same operators to violently target other opponents.’”<sup>20</sup> The CIA assessment reportedly states, “We assess it is highly unlikely this team of operators . . . carried out the operation without Muhammed bin Salman’s authorization.”<sup>21</sup>

13. In a December 4, 2018 editorial in the *Wall Street Journal*, Senator Lindsey Graham (R-S.C.) said, “Given the evidence U.S. intelligence has gathered on Khashoggi’s killing, denying the crown prince’s involvement amounts to willful blindness.”<sup>22</sup>

14. On December 4, 2018, after CIA Director Gina Haspel briefed senators in a closed session on the Khashoggi killing, Senator Graham told reporters, “I think [Crown Prince Mohammad bin Salman is] complicit in the murder of Mr. Khashoggi to the highest level possible.”<sup>23</sup> He said that it was clear that Secretary Pompeo and Secretary Mattis were being “good soldiers” for the White House when they briefed senators the previous week, but that their assessments had been misleading.<sup>24</sup> In reference to Secretary Mattis’s insistence that American officials had seen “no smoking gun” to indicate Crown Prince Mohammad bin Salman was to blame in Mr. Khashoggi’s killing, Senator Graham said, “There is not a smoking gun, there’s a smoking saw . . . . You have to be willfully blind [not to see it].”<sup>25</sup>

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<sup>20</sup> *Id.* (quoting excerpts from the report).

<sup>21</sup> *Id.*

<sup>22</sup> Lindsey Graham, Editorial, *Congress Gets Tough on the Saudis*, Wall St. J. (Dec. 4, 2018), <https://www.wsj.com/articles/congress-gets-tough-on-the-saudis-1543880186>.

<sup>23</sup> Eric Schmitt & Nicholas Fandos, *Saudi Prince ‘Complicit’ in Khashoggi’s Murder, Senators Say After C.I.A. Briefing*, N.Y. Times (Dec. 4, 2018), <https://www.nytimes.com/2018/12/04/us/politics/cia-senate-khashoggi.html>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

15. Similarly, Senate Foreign Relations Committee Chairman Bob Corker (R.-Tenn.) told reporters, “I have zero question in my mind that the crown prince directed the murder and was kept apprised of the situation all the way through . . . . If he was in front of a jury, he would have a unanimous verdict in about 30 minutes—a guilty verdict.”<sup>26</sup>

16. On December 13, 2018, a bipartisan group of senators unanimously approved a resolution holding Crown Prince Mohammad Bin Salman responsible for the murder of Jamal Khashoggi.<sup>27</sup> In late December 2018, further debate centered around a video broadcast on Turkish television showing men carrying large suitcases inside the Saudi Consul General’s gated residence in Istanbul, not far from the Saudi Consulate.<sup>28</sup> Turkish officials had previously said that Saudi officials had disassembled Mr. Khashoggi’s body with a bone saw and carried them out of the Consulate in suitcases.<sup>29</sup>

17. In June 2019, Agnes Callamard, the United Nations Special Rapporteur on extrajudicial executions, issued a report finding the State of Saudi Arabia responsible for Mr. Khashoggi’s murder. The report noted there was “credible evidence, warranting further investigation of high-level Saudi officials’ individual liability, including that of the Crown Prince [Mohammed Bin Salman].”<sup>30</sup>

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<sup>26</sup> Kristina Peterson & Nancy A. Youssef, *Senators Conclude the Saudi Crown Prince Ordered Journalist’s Killing*, Wall St. J. (Dec. 4, 2018), <https://www.wsj.com/articles/bolton-calls-khashoggi-death-a-heinous-crime-1543942052>.

<sup>27</sup> Clare Foran et al., *Senate rebukes Trump, condemns Saudi crown prince for Khashoggi murder*, CNN (Dec. 13, 2018), <https://www.cnn.com/2018/12/13/politics/corker-saudi-crown-prince-khashoggi/index.html>.

<sup>28</sup> Alan Yuhas, *Video on Turkish TV Is Said to Show Khashoggi’s Remains Being Moved*, N.Y. Times (Dec. 31, 2018), <https://www.nytimes.com/2018/12/31/world/middleeast/khashoggi-video-turkey.html>.

<sup>29</sup> *Id.*

<sup>30</sup> United Nations, Office of the High Commissioner for Human Rights, *Khashoggi killing: UN human rights expert says Saudi Arabia is responsible for “premeditated execution,”* (June 19, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24713>.



18. The Saudi government and high-level Saudi officials have not, however, been held accountable for Mr. Khashoggi's murder. The Crown Prince has denied prior knowledge of the crime.<sup>31</sup> After a secret trial, in December 2019, a Saudi court ruled that the killing was not premeditated and delivered five death sentences and three prison terms while exonerating Saud al Qahtani (a top advisor to the Crown Prince and part of his "inner circle"), Ahmed al-Assiri (former deputy intelligence chief, also part of the Crown Prince's "inner circle"), and Mohammed al-Otaibi (Saudi consul general in Istanbul at the time of the killing).<sup>32</sup> Special Rapporteur Callamard criticized the court ruling as a "mockery" that allowed the "masterminds" of the Khashoggi murder to "walk free," "barely touched by the investigation and the trial."<sup>33</sup>

19. Calls for accountability for Mr. Khashoggi's murder have continued.<sup>34</sup> In December 2019, Congress enacted the National Defense Authorization Act for Fiscal Year 2020 (NDAA), including provisions requiring the Director of National Intelligence to provide to Congress reports on the killing of Jamal Khashoggi.<sup>35</sup> Specifically, section 1277 of the NDAA required the Director to submit to appropriate congressional committees a report in unclassified form (which could include a classified annex) consisting of:

(1) a determination and presentation of evidence with respect to the advance knowledge and role of any current or former official of the Government of Saudi Arabia or any

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<sup>31</sup> Braktkton Booker, *Saudi Crown Prince On Killing Of Jamal Khashoggi: 'It Happened Under My Watch'*, NPR, (Sep. 26, 2019), <https://www.npr.org/2019/09/26/764604566/saudi-crown-prince-on-killing-of-jamal-khashoggi-it-happened-under-my-watch>.

<sup>32</sup> Sarah El Sirgany and Lauren Said-Moorhouse, *Saudi Arabia sentences five to death for Khashoggi murder but clears three top officials*, CNN.com (Dec. 23, 2019), <https://www.cnn.com/2019/12/23/middleeast/saudi-arabia-jamal-khashoggi-intl/index.html>.

<sup>33</sup> *Id.*

<sup>34</sup> *Full Accountability Needed in Khashoggi Killing, Rights Groups Say*, VOA News (Mar. 27, 2020), <https://www.voanews.com/press-freedom/full-accountability-needed-khashoggi-killing-rights-groups-say>.

<sup>35</sup> S. 1790, National Defense Authorization Act for Fiscal Year 2020 (NDAA) (P.L. 116-92), §§ 1277, 5714.

current or former senior Saudi political figure over the directing, ordering, or tampering of evidence in the killing of Washington Post columnist Jamal Khashoggi; and

(2) a list of foreign persons that the Director of National Intelligence has high confidence—

(A) were responsible for, or complicit in, ordering, controlling, or otherwise directing an act or acts contributing to or causing the death of Jamal Khashoggi;

(B) knowingly and materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, an activity described in subparagraph (A); or

(C) impeded the impartial investigation of the killing of Jamal Khashoggi, including through the tampering of evidence relating to the investigation.<sup>36</sup>

20. Section 5714 of the NDAA required the Director to submit to Congress a report, in unclassified form, on the death of Jamal Khashoggi, that included “identification of those who carried out, participated in, ordered, or were otherwise complicit in or responsible for the death of Jamal Khashoggi.”<sup>37</sup>

21. The Director failed to comply with NDAA’s requirements that the aforementioned reports be provided within 30 days of law’s enactment.<sup>38</sup> In February 2020, ODNI sent Congress a classified report along with a letter stating that the office could not

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<sup>36</sup> NDAA, § 5714.

<sup>37</sup> NDAA, §§ 1277, 5714.

<sup>38</sup> *Id.* Emma Loop, *A Law Required The US’s Top Intelligence Official To Turn Over A Report On Jamal Khashoggi’s Killing. He Blew The Deadline.*, BuzzFeed News (Jan. 23, 2020), <https://www.buzzfeednews.com/article/emmaloop/jamal-khashoggi-report-odni>; Andrew Desiderio, Burr, Warner ask DNI to declassify Khashoggi info, Politico (Mar. 3, 2020), <https://www.politico.com/news/2020/03/03/congress-ask-declassify-khashoggi-information-119458>.

provide any unclassified information about Khashoggi's death due to concerns about revealing sources and methods.<sup>39</sup>

22. In a February 27, 2020 letter, House Intelligence Committee Chairman Adam Schiff (D-Calif.) urged the Acting Director of National Intelligence, Richard Grenell, to declassify the report.<sup>40</sup> Chairman Schiff's letter stated:

The House Permanent Select Committee on Intelligence ("Committee") is in receipt of your office's submission to Congress of a classified annex regarding the killing of U.S. resident Jamal Khashoggi, provided in response to the Intelligence Authorization Act (IAA) and the National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92). The Committee requests that the Office of the Director of National Intelligence immediately declassify the annex in order to produce an unclassified report, as required by law. . . .

The Committee shares ODNI's concerns regarding the protection of sensitive Intelligence Community sources and methods. However, after reviewing the classified annex, the Committee believes that the annex could be declassified with appropriate redactions that should not alter or obscure in any way the Intelligence Community's determinations, presentation of evidence, or identification of relevant persons, as required by law. In

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<sup>39</sup> Olivia Beavers, *Schiff presses top intel official to declassify part of report on Khashoggi killing*, The Hill (Feb. 27, 2020), <https://thehill.com/policy/national-security/485055-schiff-presses-top-intelligence-official-to-declassify-part-of>; Emma Loop, *Congress Is Ratcheting Up Its Efforts To Force The Trump Administration To Publicly Reveal Who Ordered Jamal Khashoggi's Killing*, BuzzFeed News (May 1, 2020), <https://www.buzzfeednews.com/article/emmaloop/jamal-khashoggi-death-mbs-report-congress-declassify>.

<sup>40</sup> See Letter from Adam Schiff, Chairman, House Permanent Select Committee on Intelligence, to Richard Grenell, Acting Director of National Intelligence (Feb. 27, 2020), [https://twitter.com/Olivia\\_Gazis/status/1233152575106580487/photo/1](https://twitter.com/Olivia_Gazis/status/1233152575106580487/photo/1), attached hereto as Exhibit A (Compl. Ex. A); Beavers, *supra* note 39; Loop, *supra* note 39.

doing so, ODNI would fulfill Congress' requirement and intent that your office submit an unclassified report on the killing of Mr. Khashoggi.<sup>41</sup>

23. The letter added that it did not "foresee that any harm to U.S. national security would result from immediately declassifying the findings contained in DNI's classified annex with redactions as necessary" and that "[f]ailure to declassify the annex and produce an unclassified report could give rise to concerns that ODNI is using the classification process impermissibly in order to shield information of intense public interest from public release."<sup>42</sup>

24. In March 2020, Senator Richard Burr (R-N.C.), chairman of the Senate Intelligence Committee, and Senator Mark Warner (D-Va.), the vice chairman, sent a letter to Richard Grenell, the Acting Director of National Intelligence, urging him to reconsider his agency's decision not to declassify information related to the Khashoggi murder.<sup>43</sup> According to Senator Ron Wyden, ODNI's response to the NDAA's requirements was "[a] total and complete coverup," and "said simply that ODNI would not provide any unclassified information."<sup>44</sup> However, the classified annex provided to Congress reportedly "made clear what CIA Director Gina Haspel and other officials have briefed to lawmakers in classified sessions — that [Saudi Crown Prince] Mohammed [bin Salman] played a direct role in Khashoggi's killing."<sup>45</sup>

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<sup>41</sup> Compl. Ex. A.

<sup>42</sup> *Id.*

<sup>43</sup> Ellen Nakashima, *Lawmakers want the DNI to make public the intelligence community's assessment of who's responsible for killing Jamal Khashoggi*, Wash. Post (Mar. 3, 2020), [https://www.washingtonpost.com/national-security/lawmakers-want-the-dni-to-make-public-the-intelligence-communitys-assessment-of-whos-responsible-for-killing-jamal-khashoggi/2020/03/03/aafa70ee-5d07-11ea-9055-5fa12981bbbf\\_story.html](https://www.washingtonpost.com/national-security/lawmakers-want-the-dni-to-make-public-the-intelligence-communitys-assessment-of-whos-responsible-for-killing-jamal-khashoggi/2020/03/03/aafa70ee-5d07-11ea-9055-5fa12981bbbf_story.html).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

25. Despite calls for accountability for Mr. Khashoggi's murder, Senior White House advisor Jared Kushner has continued to defend the Crown Prince and describe Saudi Arabia as a "very good ally."<sup>46</sup> Continuing public debate about Mr. Khashoggi's killing indicates that it remains a matter of urgent interest to the public.<sup>47</sup> The immediate release of the requested ODNI records is imperative for the public to properly and timely evaluate the U.S. government's response to Mr. Khashoggi's murder.

26. In an effort to increase transparency and bring accountability for the killing of Mr. Khashoggi, Plaintiff submitted FOIA requests to seven federal agencies on December 4, 2018, including ODNI, requesting records relating to the murder of Mr. Khashoggi.<sup>48</sup> Following the agencies' failure to respond within the statutorily prescribed time, Plaintiff filed two actions that since have been consolidated.<sup>49</sup> In response, ODNI produced a limited set of responses to media inquiries and issued a "no number, no list" response for all other records, arguing that FOIA's national security exemptions shield even the number of remaining responsive documents from disclosure. ODNI then filed for summary judgment, Plaintiff cross-moved, and briefing on the motions was completed on March 31, 2020.

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<sup>46</sup> Bill Powell, *Kushner Gets Candid About Struggling Trump Campaign, Mideast Peace, More*, Newsweek (July 20, 2020), <https://www.newsweek.com/2020/07/24/exclusive-jared-kushner-gets-candid-about-struggling-trump-campaign-mideast-peace-more-1518952.html>.

<sup>47</sup> *Id.*; *A chilling new chapter of alleged perfidy by the Saudi crown prince*, Wash. Post (Aug. 9, 2020), [https://www.washingtonpost.com/opinions/global-opinions/the-saudi-crown-prince-of-death-squads/2020/08/07/89be9d16-d8d5-11ea-aff6-220dd3a14741\\_story.html](https://www.washingtonpost.com/opinions/global-opinions/the-saudi-crown-prince-of-death-squads/2020/08/07/89be9d16-d8d5-11ea-aff6-220dd3a14741_story.html); Alex Simmons, *Pentagon Nominee Questioned About Company's Reported Ties to Khashoggi's Killers*, The Intercept (Aug. 6, 2020), <https://theintercept.com/2020/08/06/pentagon-jamal-khashoggi-louis-bremer-cerberus/>; David Hearst, Saad al-Jabri: *The Saudi who could bring down Mohammed bin Salman*, Middle East Eye (Aug. 10, 2020), <https://www.middleeasteye.net/opinion/saad-jabri-saudi-arabia-mbs-not-die>.

<sup>48</sup> Compl., Jan. 9, 2019, Case No. 1:19-cv-00234, Doc. No. 1; Compl., Feb. 12, 2019, Case No. 1:19-cv-01329, Doc. No. 1-1.

<sup>49</sup> Compl., Jan. 9, 2019, Case No. 1:19-cv-00234, Doc. No. 1; Compl., Feb. 12, 2019, Case No. 1:19-cv-01329, Doc. No. 1.

### **PLAINTIFF'S FOIA REQUEST**

27. On July 20, 2020, Plaintiff submitted a FOIA request to ODNI seeking disclosure of “[r]eports (including annexes) related to the killing of Jamal Khashoggi provided in 2020 by ODNI to Congress pursuant to sections 1277 and 5714 of the National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92) and the Intelligence Authorization Act.”<sup>50</sup>

28. Plaintiff’s FOIA request to ODNI on December 4, 2018 is related to Plaintiff’s FOIA request to ODNI on July 20, 2020 in that both requests concern the same parties and subject matter and there is substantial factual and legal overlap. While both requests relate to the same subject matter, Plaintiff’s instant FOIA request is for a limited set of additional records which did not exist at the time when Plaintiff filed its first suit against ODNI in connection with the December 4, 2018 FOIA request and was therefore not encompassed by that prior request.

29. Plaintiff requested expedited processing of its FOIA request on the ground that it is an organization “primarily engaged in disseminating information” and there is a “compelling need” for the records sought because they contain information “urgent[ly]” needed to “inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).<sup>51</sup>

30. Plaintiff also requested a fee waiver on the grounds that it is a “representative of the news media” within the meaning of FOIA and that disclosure of the requested records is in the public interest because it is “likely to contribute significantly to public understanding of the

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<sup>50</sup> A copy of OSJI’s FOIA request, dated July 20, 2020, is attached hereto as Exhibit B. (Compl. Ex. B).

<sup>51</sup> See Compl. Ex. B.

operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. §§ 552(a)(4)(A)(ii)(II); 552(a)(4)(A)(iii).<sup>52</sup>

### **AGENCY RESPONSES**

31. On July 23, 2020, ODNI acknowledged that it had received Plaintiff’s FOIA request on July 21, 2020. ODNI also informed Plaintiff that it had been granted a fee waiver but denied expedited processing on the grounds that it had “not satisfied ODNI standards for expedited processing established in 32 CFR 1700.12.”<sup>53</sup>

32. Defendant ODNI has not made a determination on Plaintiff’s request as required by FOIA and has not disclosed any responsive records.

33. Plaintiff has constructively exhausted administrative remedies on account of Defendant’s failure to comply with the 20-day time limit for making a determination on Plaintiff’s requests as required by FOIA.

### **CAUSE OF ACTION**

#### **Violation of the Freedom of Information Act for Improper Withholding of Agency Records**

34. Plaintiff repeats, re-alleges, and incorporates the foregoing paragraphs as if set forth in full.

35. Defendant has improperly withheld the requested records from Plaintiff by failing to comply with the statutory time limit for rendering a determination on Plaintiff’s FOIA requests in violation of 5 U.S.C. § 552(a)(6)(A)(i) and Defendant’s corresponding regulations.

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<sup>52</sup> See Compl. Ex. B.

<sup>53</sup> A copy of ODNI’s response letter to Amrit Singh dated July 22, 2020, is attached hereto as Exhibit C (Compl. Ex. C).

36. Defendant's failure to make reasonable efforts to search for records responsive to Plaintiff's requests violates FOIA, 5 U.S.C. § 552(a)(3)(C), and Defendant's corresponding regulations.

37. Defendant's failure to promptly disclose records responsive to Plaintiff's requests violates FOIA, 5 U.S.C. § 552(a)(3)(A), and Defendant's corresponding regulations.

38. Defendant's failure to grant Plaintiff's requests for expedited processing violates FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendant's corresponding regulations.

39. Plaintiff has exhausted all applicable administrative remedies.

40. Plaintiff is entitled to injunctive relief with respect to the prompt disclosure of the requested documents.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Expedite its consideration of this action pursuant to 28 U.S.C. § 1657(a);
- B. Order Defendant immediately to conduct a thorough search for records responsive to Plaintiff's request;
- C. Order Defendant immediately to process any responsive records for disclosure and produce such records to Plaintiff;



- D. Award Plaintiff its costs and reasonable attorneys' fees incurred in this action; and
- E. Grant such other relief as the Court may deem just and proper.

Dated: August 19, 2020  
New York, New York

Respectfully submitted,

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